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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,716	12/12/2003	Rodney Eugene Libby	LIB0001-US1	2353

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EXAMINER

GORDON, STEPHEN T

ART UNIT PAPER NUMBER

3612

DATE MAILED: 01/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/734,716

Applicant(s)

LIBBY, RODNEY EUGENE

Examiner

Stephen Gordon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 November 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 December 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12-12-03</u> | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. Applicant's election without traverse of Group I in the reply filed on 11-15-04 is acknowledged. Applicant indicates that non-elected claims 21-23 are canceled.
2. Applicant should note, to conform to current office policy, claims 21-23 should be listed at the end of the current claim listing submitted in response to this action and marked as "canceled".
3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 300 (figure 3) and 400 (figure 4). Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.
4. The disclosure is objected to because of the following informalities: the brief drawing description of figure 3 on page 2 should apparently be amended to delete reference to "according to the prior art" as the device shown in figure 3 has been

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modified from the prior art – note addition of drilled holes 312 and 316. Note also figure 3 is not labeled as “prior art”.

Appropriate correction is required.

5. Claims 7-10 and 17-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Re claim 7, “the high-carbon steel” lacks antecedent basis.

Re claim 8, “the high-carbon steel” lacks antecedent basis.

Re claim 9, “the high-carbon steel” lacks antecedent basis.

Re claim 10, “the high-carbon steel” lacks antecedent basis.

Re claim 17, “the high-carbon steel” lacks antecedent basis.

Re claim 18, “the high-carbon steel” lacks antecedent basis.

Re claim 19, “the high-carbon steel” lacks antecedent basis.

Re claim 20, “the high-carbon steel” lacks antecedent basis.

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-5 and 11-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Hodge.

Hodge teaches a tailgate 12 including a tailgate support 30+ as broadly claimed with a torsion spring 32 (figure 4 embodiment) with a first leg attached to the

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support (at 74) and a second leg attached to the tailgate (at 76) as broadly claimed.

Re claim 1, the figure 4 embodiment operates such that the torsion spring is actuated in a winding direction as the tailgate is opened.

Re claims 2 and 12, the reference teaches removable attachment as broadly claimed.

Re claims 3 and 13, the spring comprises 2.5 coils as broadly claimed.

Re claim 11, at least element 38 is readable on the tailgate support and shaft 30 is readable on the rod as broadly claimed.

Re claims 4, 5, 14, and 15, relying on the relative dimensions illustrated in figure 1 (e.g. typical tire size for a dump truck etc.), the spring width and thickness as illustrated are very clearly greater than 3/16 of an inch as broadly claimed.

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 6 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hodge in view of Zagaroff.

Re claims 6 and 16, Hodge teaches all of the claimed features as discussed above regarding claims 1 and 11 in the section 102 rejection but fails to specifically teach that the spring can be made of high-carbon steel (no specific material is taught).

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Zagaroff teaches a coil spring 102 used in a system for retarding a tailgate's downward movement during opening. Zagaroff further teaches that the spring can be made from high-carbon steel as broadly claimed.

In order to create a spring which is of sufficient strength and has good spring characteristics (e.g. K value etc.), it would have been obvious to one of ordinary skill in the art to utilize high-carbon steel for the spring of Hodge in view of the teachings of Zagaroff.


10. The failure to apply the prior art to claims 7-10 and 17-20 should not be construed as an indication of allowable subject matter. Because these claims so seriously fail to meet the requirements of 35 USC 112 – second paragraph for the reasons stated above, it is not possible to apply the prior art without disregarding portions of the express wording of the claims and/or resorting to speculation and conjecture as to the particular invention defined therein. See Ex Parte Lyell, 17 USPQ2d 1548, 1552.

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note at least Ballard et al teaches a spring biased tailgate movement retarding system.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Gordon whose telephone number is (703) 308-2556. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Stephen Gordon  
Primary Examiner  
Art Unit 3612

stg